



**REPUBLIC OF MALAWI**

**INQUIRY BY THE OMBUDSMAN**

**IN THE MATTER**

**BETWEEN**

**AMON BANDA.....COMPLAINANT**

**AND**

**MALAWI DEFENCE FORCE.....RESPONDENT**

**INQUIRY NO.14/2019**

**FILE NUMBER - LL/2011/OMB/0120**

**CORAM:**

**MARTHA CHIZUMA - OMBUDSMAN**

**Complainant - present**

**Respondent - Absent but served**

**DETERMINATION**

## DETERMINATION

1. The Complainant lodged his complaint with our Lilongwe office alleging unfair dismissal. The complaint letter was dated 15<sup>th</sup> August, 2011.
2. A public inquiry was held on 2<sup>nd</sup> December, 2016 and although the Respondent was duly served, they were absent on the set date for the public inquiry. In his evidence the Complainant stated that he was working for the Respondent as a trainer of trainees. After 8 years he was made a clerk. He worked in this position for 9 years. Due to his success at work and at church, some of his work colleagues became jealous of him and started making allegations that he was practicing witchcraft and teaching children in the compound the said practice. As a consequence he was transferred to Muluzi Barracks in Changalume which is a Barracks for the people who have been difficult in their respective barracks. Whilst at Changalume, he was sometimes instructed to go and teach at MAFCO. As a result the jealous feeling among his colleagues continued to the point that a few of them put notices in a number of places that he should be killed. They even put a specific date that he was to be killed. He took the posters to his boss.
3. The issue became known throughout the army. One night soldiers came and broke into his house and beat him senseless. He was admitted at hospital and his family ran in the night and hid. Most of his property was stolen. Later he was transferred to Cobbe Barracks. The soldiers who assaulted him were prosecuted in a court of law and were convicted.
4. He did not want to stop working but he was forced to leave. He states that he was dismissed and at time of dismissal he was 37 years old. The retirement age was 55 at that time and his salary at the time of dismissal was about a net of K27, 000.00. He was holding a position of sergeant.
5. He states that since his services were termination life has been hard and that his family has suffered as a result.
6. My mandate as per section 123 of the Constitution coupled with section 5 of the Ombudsman Act is to investigate alleged injustices as a result of maladministration. Injustice has not been defined but it includes things like financial loss or unnecessary expenses, hurt feelings distress, worry or inconvenience, loss of right or amenity, time and trouble of pursuing a justifiable complaint. In as far as maladministration on the other hand is

defined as. Maladministration occurs when a public body does something it ought not to have done for reasons such as *bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and arbitrariness.*

7. From the evidence it is clear that the Complainant was dismissed under section 22 of the Army Act which states as follows;

*A soldier of the Regular force may be discharged by the competent military authority at any time during the currency of any term of engagement upon such grounds as may be prescribed.*

8. The question to ask is whether being severely beaten by one's colleagues due to suspicion of practicing witchcraft suffice as a ground envisaged in the law above? I think not, because the law in Malawi does not recognize witchcraft and accordingly for the Army to actually terminate the employment of the Complainant based on such allegations simply adds insult to the injury suffered by the Complainant. The Army could have handled this matter much better than they did.
9. Therefore, I find that the Respondent's termination of the Complainant's services based on consideration of witchcraft allegations and the ensuing fracas amounted to unfair treatment and unreasonable conduct on their part. It is maladministration.

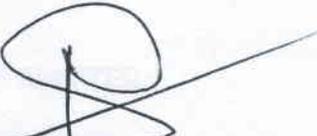
#### Directives.

10. As per section 126 of the Constitution, where I am satisfied that an injustice has been done, I am empowered to redress that grievance, therefore on that note I direct by virtue of powers vested in me by section 126 of the Constitution and 8 of the Ombudsman Act that the Complainant be compensated for his unfair termination. He should be paid 5 years' salary being the loss suffered as a result of the unfair termination. This money should be paid at the rate of salary of the position he was terminated on as at the date of this determination. The money should be paid by 30<sup>th</sup> September, 2019.

**Right of Review**

11. Any dissatisfied party may apply for review of this Determination by the High Court pursuant to section 123 (2) of the Constitution within 3 months from the date hereof.

Dated this 23<sup>rd</sup> Day of April, 2019

  
Martha Chizuma  
**OMBUDSMAN**